

WEBINAR WEDNESDAYS



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ARIZONA'S MANDATORY REPORTING LAW

Presented by:

Rachel Mitchell

Special Assistant
Maricopa County Attorney's Office

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ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
3838 N. Central Ave., Suite 850
Phoenix, Arizona 85012

ELIZABETH BURTON ORTIZ
EXECUTIVE DIRECTOR

REPORTING ABUSE

RACHEL MITCHELL

SPECIAL ASSISTANT – PROSECUTION INTEGRITY

MARICOPA COUNTY ATTORNEY'S OFFICE

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This presentation, including the slide presentation, materials, and comments of the presenter, is not legal advice as to any specific situation. The intent of the training is to present general information on the requirements of the mandatory reporting law(s). You should obtain any specific legal advice from an attorney who represents you or your organization.

Topics Covered

- Myths of Sexual Abuse
- How Sex Offenders Operate
- Mandatory Reporting Laws
 - Child Abuse
 - Vulnerable Adults

Quiz

- Most molestations result in some form of physical evidence.
- All acts are equally underreported.
- Offenders who molest males outside of the home tend to have a lower number of offenses.
- Offenders hardly ever molest with others present or nearby.

Do most molestations result in some form of physical evidence?

- No – only approx 5% of cases do.

Are all acts equally underreported?

- More underreported
 - Anal sex
 - Oral sex
 - Level of violence
- Emerick & Dutton

Do offenders who molest males outside of the home tend to have a lower number of offenses?

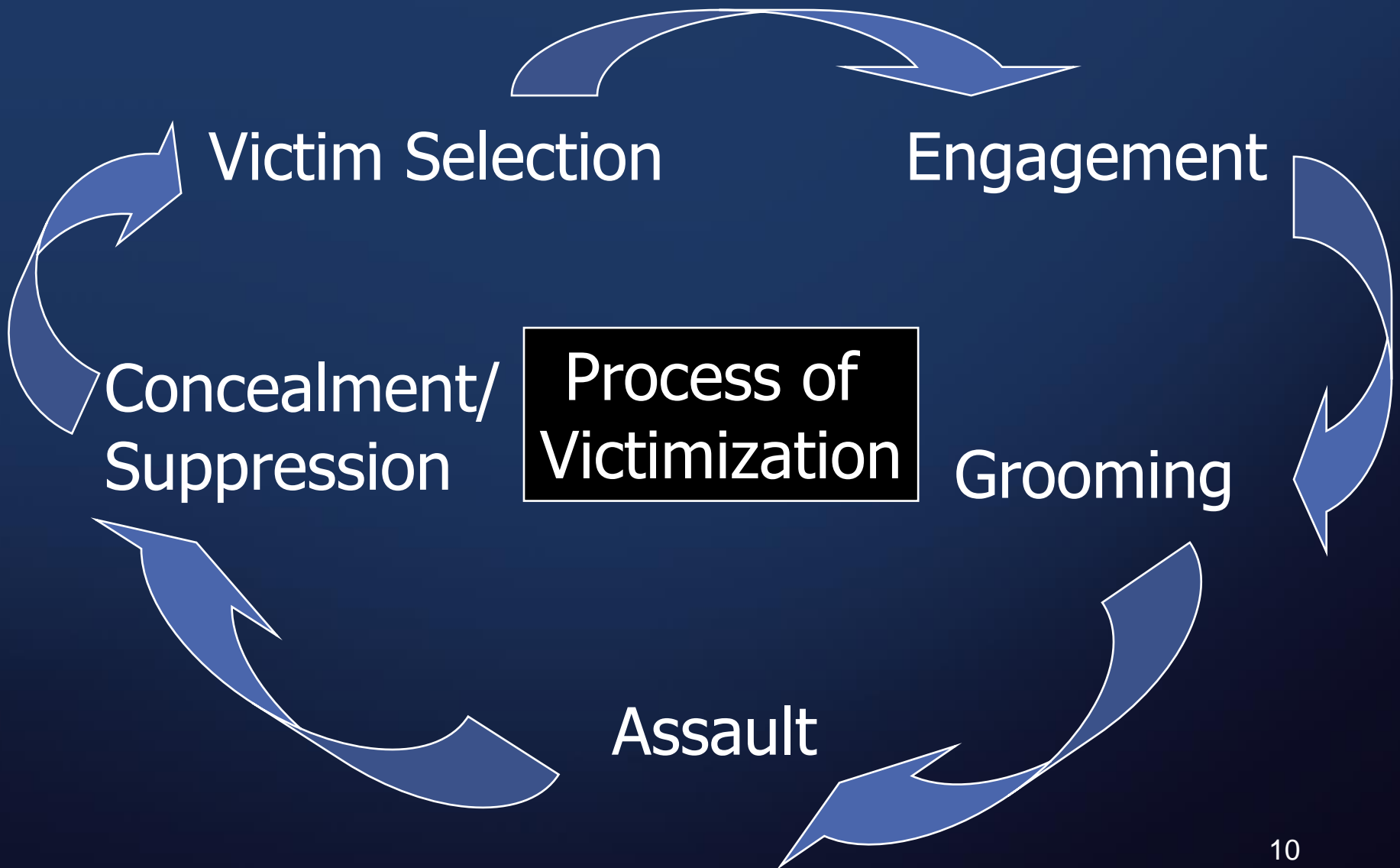
- Offenders who molest girls within family:
 - 81.3 acts with 1.8 victims
- Offenders who molest boys outside of family:
 - 281.7 acts with 150.2 victims

Male Victims

- Society has greater expectation of resistance
- Homosexuality issues
- Concerns that victim will become offender

Do offenders molest with others present or nearby?

- 54.9% molested with another child present
- 23.9% molested with another adult present
- 14.2% molested with both another adult and another child present
- 63% of those who had not molested with others present felt that they may have progressed to that point



Sex Offender Statistics

- Domestic Violence in Home – Approx. 1/2
- Physical Abuse of Offender – Approx. 1/2
- Sex Offenders Who Report Being Sexually Abused (pre-polygraph) – Approx. 70%
- Sex Offenders Who Were Sexually Abused (post-polygraph) – Approx. 1/3

Other Barriers to Reporting

- Peer/societal pressure
- Bad response (“Disclosure Disaster”)

Arizona's Mandatory Reporting Laws

A.R.S. § 13-3620

Applies if the mandatory reporter
reasonably believes that

- A minor is or has been the victim of
 - Sexual abuse
 - Physical abuse
 - Neglect

Two Primary Categories of Mandatory Reporters

- Persons who develop “reasonable belief” in the course of their duties.
- Persons who develop “reasonable belief” at any time.

Must Report Based on Reasonable Belief Developed in the Course of Duties:

- Employment
 - School Personnel (even if the victim does not attend the same school)
 - Domestic Violence Victim Advocate

Course of Duties (cont.)

- Treating a Patient:

- Nurse
- Psychologist
- Physician
- Dentist
- Chiropractor
- Behavioral Health Professional
- Counselor
- Social Worker
- Optometrist
- Osteopath
- Podiatrist

Must Report Based on Reasonable Belief Developed at any Time:

- Peace Officer, OCWI, DCS
- Clergy
- Parent, stepparent, or guardian of the minor believed to have been abused
- Any other person who has responsibility for the care or treatment of the minor

All others may report.

“Reasonable belief is a low standard”

“[I]f there are ANY facts from which one could reasonably conclude that a child had been abused, the person knowing those facts is required to report.”

- L.A.R. v. Ludwig (App).

The reporting entity should not investigate.

“We do not believe our legislature intended persons with knowledge of alleged child abuse to conduct their own investigation to decide whether enough evidence of abuse exists to warrant a report.”

- L.A.R. v. Ludwig

What Must the Report Contain?

If known:

1. Names & addresses of the minor and the parents or custodians of the minor.
2. The minor's age and the nature and extent of the abuse, physical injury or neglect (including evidence of prior abuse, physical injury or neglect).

What Must the Report Contain?

3. Any other information the person reporting believes might be helpful in establishing the cause of the abuse, physical injury or neglect.

What is the Penalty for Failure to Report?

- Failure to report a sex-related offense is a class 6 felony.
- Failure to report all other offenses is a class 1 misdemeanor.

Personal examination or observation of the minor is not required.

The duty to report is a personal responsibility.

- Reporting to organization or supervisor does NOT excuse your own duty to report (regardless of organization's policy).
- Suggestion: When you report, get a police report (“DR”) number, or DCS referral number.

Civil Immunity

- A person who complies with this law is immune from any civil or criminal liability unless the person acts with malice.

Mandatory reporters must report immediately.

- Mandatory Reporters
 - Immediately by phone or electronically.
- Discretionary Reporters
 - No time limits – but why wait?

To whom?

- If suspect has care, custody or control of minor - law enforcement or DCS.
- If suspect does not have care, custody or control of minor - law enforcement only.

Exceptions

OLDER TEENS EXCEPTION

- BOTH parties are 14, 15, 16, or 17
- There is nothing to indicate conduct is other than consensual
- Conduct involves
 - Intercourse, oral sexual conduct, anal sex
 - Touching breasts
 - Masturbatory conduct

SCHOOL EXCEPTION

- Elementary school age child
- Accidental physical injury in the course of typical playground activity
- During a school day
- Reported to the legal parent or guardian of the minor
- School maintains a written record of the incident.

SEX OFFENDER TREATMENT EXCEPTION

- If court-ordered, must report/cannot use.
 - If not court-ordered, may report/may use.
-
- ARS § 13-4066

CLERGY/PENITENT EXCEPTION

- Church recognizes confidentiality
- Clergy believes not reporting is “reasonable and necessary within the concepts of the religion.”
- Does not apply to observations
- May not apply if 3rd party present
 - *But see State v. Archibeque*

Attorney/Client Privilege

Offenses

PHYSICAL ABUSE

INTENTIONALLY, KNOWINGLY, RECKLESSLY
OR NEGLIGENTLY

- Any minor
 - Inflicting or allowing physical injury or abuse
- A minor in one's care or custody
 - Causing or permitting the minor to be injured or placed in a situation where the minor's person or health is endangered

Abuse and Endangerment include

- Allowing a minor to be in a drug house
- Serious emotional damage that is diagnosed by a medical doctor or psychologist
 - *E.g.*, severe anxiety, depression, withdrawal or untoward aggressive behavior

“Physical Injury”: Impairment of physical condition, including

- Skin bruising
- Pressure sores
- Bleeding
- Failure to thrive
- Malnutrition
- Dehydration
- Burns
- Fracture of any bone
- Subdural hematoma
- Soft tissue swelling
- Injury to any internal organ
- Any physical condition that imperils health or welfare

Neglect

- Not providing necessities of life (e.g., supervision, food, clothing, shelter or medical care) if it causes substantial risk of harm to the child's health or welfare.

Sexual Offenses

- Indecent Exposure
- Public Sexual Indecency
- Sexual Abuse
- Sexual Conduct with a Minor
- Molestation of a Child
- Sexual Assault
- Continuous Sexual Abuse of a Child
- Incest

Sexual Offenses

- Possession/production of child sexually exploitive materials
- Luring a Minor for Sexual Exploitation
- Admitting Minors to Public Displays of Sexual Conduct
- Furnishing Harmful Items to Minors
- Surreptitious Photographing, Videotaping, Filming or Digitally Recording of a Minor
- Child Prostitution
- Unlawful Mutilation

A.R.S. § 46-454

Mandatory Reporters

- Medical professional, psychologist, pharmacist, speech/physical/occupational therapist, long-term care provider, social worker, LE, ME, guardian, conservator, fire personnel, developmental disabilities provider, DES or person cares for a vulnerable adult.

Mandatory Reporters, cont.

An attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax records of a vulnerable adult or for any other action concerning the use or preservation of the vulnerable adult's property.

Non-mandatory reporters may report.

Reasonable Belief

- Abuse
- Neglect
- Exploitation

When and to whom?

- Immediately to law enforcement or APS
- Guardian or conservator: Superior court and APS
- All of the above reports shall be made immediately by telephone or online.

Report must contain:

- Names and addresses of adult and persons having control or custody of the adult, if known.
- Age and the nature and extent of the vulnerability.
- Nature and extent of the abuse, neglect or exploitation.
- Any other information that might be helpful in establishing the cause of the abuse, neglect or exploitation.

Other Provisions

- Retaliation against reporter or victim is prohibited.
- LE is a mandatory cross-reporter to APS.
- Failure to report – class 1 misd.

Central Registry ARS § 46-457

- If victim is a vulnerable adult, a criminal complaint or indictment charging a violation of this article or 13-1102 thru -1105, 13-1201, 13-1203, 13-1204, 13-1303, 13-1304, 13-1403, 13-1404, 13-1406, 13-1802, 13-1807, 13-2002, 13-2310 or 13-3623 shall be sent to the AG within 30 days after arraignment.
- Within 30 days of issuance the court shall endorse the AG on the sentencing minute entry or the minute entry reflecting the case has been dismissed or a judgment of acquittal has been entered.

Bibliography

- Emerick, R. L., Dutton, W. A. (1993). The effect of polygraphy on the self-report of adolescent sex offenders: Implications for risk assessment. *Annals of Sex Research*, 6, 83-103 (1993).
- *L.A.R. v. Ludwig*, 170 Ariz. 24 (App. 1991).
- *State v. Archibeque*, 223 Ariz. 231 (App. 2009).